

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL HIN)	
Claimant)	
)	
VS.)	
)	
TRU CIRCLE MANUFACTURING)	
Respondent)	Docket No. 1,000,623
)	
AND)	
)	
CONTINENTAL CASUALTY COMPANY)	
AND FREMONT INDEMNITY COMPANY)	
Insurance Carriers)	

ORDER

The respondent and one of its insurance carriers, Continental Casualty Company (CNA), appealed the July 22, 2003 preliminary hearing Order entered by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

ISSUES

This is a claim for repetitive trauma injuries to claimant's upper extremities. Claimant alleges a series of accidents beginning "[a]pproximately 9/15/00 and each and every working day thereafter through 6/01/01." ¹

In the July 22, 2003 preliminary hearing Order, Judge Barnes awarded claimant additional medical treatment and authorized Dr. Paul Stein as the treating physician "to

¹ K-WC E-1 Application for Hearing (filed Dec. 7, 2001).

provide the medical care and treatment recommended in his IME report, including referrals for nerve conduction testing and any additional tests." ²

The respondent and CNA contend the ALJ erred in finding claimant suffered an accidental injury arising out of and in the course of his employment with Tru Circle Manufacturing. Respondent and CNA further contend that claimant failed to provide timely notice of his left upper extremity injury.

Respondent and Fremont Indemnity Company (Fremont) contend claimant did not suffer injury during its period of coverage ³ and therefore, Fremont is not liable for any portion of this claim. ⁴

Claimant argues that the preliminary hearing Order dealt only with the issue of medical treatment, and, therefore, the Board is without jurisdiction to hear this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and after considering the parties arguments, the Board finds and concludes that the July 22, 2003, Order should be reversed.

The Board has jurisdiction to review the issues raised by the appellants.

A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. ⁵

Claimant last worked for Tru Circle Manufacturing on June 1, 2001. At that time, claimant had been treated and released by orthopedic surgeon Mark Melhorn, M.D. Dr. Melhorn's treatment had been confined to claimant's right upper extremity, specifically the elbow. As of May 25, 2001, the last date claimant was examined by Dr. Melhorn before claimant left his job with respondent, the medical records indicate claimant's symptoms were limited to the right upper extremity.

² Order at 2.

³ Fremont represents that its insurance coverage was Dec. 1, 1999 through Nov. 30, 2000.

⁴ Brief of Appellee Fremont Compensation and Tru Circle Manufacturing, Inc. at 5.

⁵ K.S.A. 44-534a(a)(2).

After his layoff from Tru Circle Manufacturing claimant began working for another employer, APAC Engineering on July 23, 2001, performing the same type of work that he did for Tru Circle Manufacturing. Both the treating physician, Dr. Melhorn and the court ordered independent medical examiner, Dr. Stein, opined claimant's condition worsened after leaving his employment with respondent and, moreover, attribute the worsening to claimant's subsequent employment activities at APAC Engineering. "Therefore, it would appear more likely than not that his current symptomatology in both upper extremities is at least in part due to work at APAC." ⁶ Also, in Dr. Melhorn's chart note of January 9, 2003, he stated, "[t]hat it is more likely than not that his current symptoms post 6/01/01 would be related to his new employment, hand former at APAC, rather than his previous employment prior to 6/01/01." ⁷

The Board is mindful of Dr. Murati's contrary opinion, but nevertheless finds claimant's current symptoms and need for medical treatment are, at least in part, attributable to his subsequent employment at APAC Engineering. Where a condition is shown to have been caused or aggravated by a subsequent intervening injury, respondent's liability for providing medical treatment ends. ⁸ Therefore, the Order assessing the costs of claimant's treatment to respondent and its insurance carrier should be reversed.

WHEREFORE, the July 22, 2003, Order entered by Administrative Law Judge Nelsonna Potts Barnes, is reversed.

IT IS SO ORDERED.

Dated this _____ day of October 2003.

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
D. Steven Marsh, Attorney for Respondent and Continental Casualty Co.
Gary K. Albin, Attorney for Respondent and Fremont Indemnity Co.
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁶ P.H. Trans. Ex. 1 Stein at 5.

⁷ P.H. Trans. Ex. 1 Melhorn at 1.

⁸ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997); *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P.2d 697 (1973).